

STATE OF MICHIGAN
COURT OF APPEALS

STATE TREASURER,

Plaintiff-Appellant,

v

EDWARD A. CAIN,

Defendant-Appellee,

and

MICHIGAN NATIONAL BANK and GIL
GRAMMATICO,

Defendants.

UNPUBLISHED

June 3, 2003

No. 226178

Macomb Circuit Court

LC No. 95-001700-CZ

Before: Markey, P.J., and Smolenski and Meter, JJ.

MEMORANDUM.

Plaintiff appeals by leave granted from a circuit court order granting the motion of defendant Edward Cain (“defendant”), a state prison inmate, to partially rescind that portion of the circuit court’s prior order that permitted plaintiff to invade defendant’s monthly pension benefit payments to reimburse the state for the costs of defendant’s incarceration. We reverse.

Plaintiff filed this action against defendant under the State Correctional Facility Reimbursement Act (SCFRA), MCL 800.401 *et seq.*, seeking reimbursement for the past and future costs of defendant’s incarceration. The circuit court entered a final order in August 1995, authorizing the state’s recovery of ninety percent of defendant’s current assets and ninety percent of his monthly pension benefit payments from Ford Motor Company. The court directed that the payments be sent to defendant’s prison account, after which the warden, who was appointed a receiver, would disburse the pension benefits in the appropriate percentages to the state and defendant.¹

¹ After a subsequent remand by this Court, the circuit court entered an amended final order in May 1996, which directed plaintiff to return to defendant approximately \$2,800, apparently representing amounts of social security, Air Force retirement, and other veteran’s benefits that
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Several years later, defendant filed a “Motion to re[s]cind order to deliver retirement check to M.D.O.C. prison account,” in which he asserted that the transfer of his Ford pension payments from his Michigan National Bank account to his prison account for state reimbursement purposes violated the allegedly preemptive federal Employee Retirement Income Security Act (ERISA), specifically 29 USC 1056(d)(1), which prohibits the alienation or assignment of pension benefits. On February 10, 2000, the circuit court, relying on 29 USC 1056(d)(1) and *State Treasurer v Baugh*, 986 F Supp 1074 (ED Mich, 1997), entered an opinion and order granting defendant’s motion to rescind on the basis that the deposit of his pension benefits into his prison account under the SCFRA violated the anti-alienation provision of the ERISA.² The court granted plaintiff’s subsequent motion for reconsideration but denied plaintiff’s motion for relief from the February 10, 2000, opinion and order.

Plaintiff contends on appeal that the circuit court incorrectly determined in this case that the ERISA preempted the state from using defendant’s pension benefits as reimbursement for the costs of his incarceration under the SCFRA. The determination whether federal law preempts a state statute involves questions of statutory interpretation that this Court reviews de novo. *Wayne Co Bd of Comm’rs v Wayne Co Airport Authority*, 253 Mich App 144, 198; 658 NW2d 804 (2002).

According to plaintiff, the circuit court incorrectly premised its preemption decision on *Baugh*. Plaintiff further argues that once the pension benefits arrived at defendant’s prison address and were deposited into his own prison account, the ERISA protection of the pension funds evaporated, permitting the state to apply the money for reimbursement purposes under the SCFRA. In light of the Supreme Court’s recent decision in *State Treasurer v Abbott*, ___ Mich ___, ___ NW2d ___ (Docket No. 120803, decided May 14, 2003), we agree.

Abbott is directly analogous to the instant case and provides that

[t]he federal prohibition on alienation and assignment of pension benefits is not violated where an inmate is directed to receive pension benefits at his own address. Further, prevailing federal authorities establish that ERISA does not protect pension proceeds that an inmate has already received. The state may distribute the funds after they are deposited in the inmate’s account to the extent permitted under the SCFRA. [*Id.*, slip op, pp 19-20]

Abbott expressly rejected the reasoning from *Baugh*, see *id.*, slip op, pp 9-10, and clearly compels a reversal of the circuit court’s order in this case.

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federal law exempted from the SCFRA.

² The circuit court also ordered that plaintiff return to defendant the pension monies the state had taken in accordance with the court’s August 1995 final order.

Reversed.

/s/ Jane E. Markey
/s/ Michael R. Smolenski
/s/ Patrick M. Meter